

Order of Dismissal with Leave to Amend
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1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
2 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that
3 the alleged violation was committed by a person acting under the color of state law. *See West v.*
4 *Atkins*, 487 U.S. 42, 48 (1988).

5 B. Legal Claims

6 The Court reviewed Plaintiff's original complaint, and dismissed it with leave to amend,
7 advising Plaintiff that it contained several improperly joined claims and parties. *See Fed. R. Civ.*
8 *P. 18(2), 20(a)(2)*. The Court noted that the complaint appeared to raise six separate claims, and
9 named as Defendants at least seven different prison officials playing a variety of roles. The
10 claims alleged that: prison officials failed to protect Plaintiff by purposefully placing him with a
11 documented enemy; prison officials created a false Rules Violation Report against Plaintiff;
12 prison officials retaliated against Plaintiff by placing him in administrative segregation and
13 secured housing; prison officials were deliberately indifferent to Plaintiff's medical needs by
14 prohibiting him from receiving physical therapy; prison officials deprived Plaintiff of property;
15 and prison officials were deliberately indifferent to Plaintiff's medical needs by refusing to fix
16 his teeth. The Court dismissed the complaint with leave to amend, directing Plaintiff to comply
17 with Federal Rules of Civil Procedure 18 and 20 concerning joinder of claims and Defendants,
18 and filing an amended complaint.

19 Plaintiff has now filed his amended complaint. A review of the amended complaint
20 reveals that, although Plaintiff has omitted his previously alleged medical needs claims, the
21 amended complaint still raises several unrelated claims against presumably different defendants.
22 It is clear that Plaintiff is attempting to raise a retaliation claim, as well as a due process claim
23 for improperly and repeatedly placing him in the SHU. It is less clear whether Plaintiff is also
24 raising a claim that Defendants failed to protect him by placing him in the yard with a known
25 enemy. Accordingly, Plaintiff will be given one more opportunity to clarify his claims in a short
26 and plain manner.

27 Moreover, although the amended complaint names Defendants, Plaintiff must link each
28 Defendant to each claim by providing facts showing the basis for liability for each individual

Defendant. For example, plaintiff should allege which Defendants in particular were responsible for retaliating against him, and what each did. He should briefly describe what action the state actor took adversely against him, because of Plaintiff's protected conduct, that it did not reasonably advance a legitimate correctional goal, and that the Defendant's act chilled his exercise of rights. *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted). Plaintiff should not refer to them as a group (e.g., "the Defendants"); rather, he should identify each involved person by name, and link each of them to the claim(s) by explaining what each Defendant did or failed to do that caused a violation of his constitutional rights. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) (liability may be imposed on individual defendant under § 1983 only if plaintiff can show that a defendant proximately caused deprivation of federally protected right).

Accordingly, the amended complaint will be dismissed with leave to amend to cure the deficiencies above, if Plaintiff can do so in good faith.

CONCLUSION

1. Plaintiff's motion for a thirty day extension of time to file his amended complaint is DENIED as unnecessary. The amended complaint is deemed timely filed, and is DISMISSED with leave to amend.

2. Plaintiff shall file a SECOND AMENDED COMPLAINT within **thirty days** from the date this order is filed to cure the deficiencies described above. The amended complaint must include the caption and civil case number used in this order (C 11-2827 LHK (PR)) and the words SECOND AMENDED COMPLAINT on the first page. Plaintiff may not incorporate material from the prior complaint by reference. **Failure to file a second amended complaint within thirty days and in accordance with this order will result in dismissal of this action.**

3. Plaintiff is advised that an amended complaint supersedes the original complaint. "[A] plaintiff waives all causes of action alleged in the original complaint which are not alleged in the amended complaint." *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981). Defendants not named in an amended complaint are no longer defendants. *See Ferdik v.*


1 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

2 4. It is the Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
3 Court informed of any change of address by filing a separate paper with the clerk headed "Notice
4 of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to
5 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule
6 of Civil Procedure 41(b).

7 This order terminates docket number 9.

8 IT IS SO ORDERED.

9 DATED: 10/21/11


LUCY H. KOH
United States District Judge